IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 98 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMMISSIONER OF INCOME TAX

Versus

N C MEHTA

Appearance:

1. INCOME TAX REFERENCE No. 98 of 1986
MR BB NAIK for MR RP BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of sec. 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the purpose of determining the disallowance under section 37(3) read with Rule 6D, the restrictions were applicable in respect of expenditure incurred on the travelling by an employee or other person and such restrictions were not applicable to the expenditure incurred for the travelling by the proprietor himself?"

2. We have heard learned advocate Shri B.B. Naik appearing for the applicant-revenue. Though served, nobody has appeared for the respondent-assessee.

3. The question, which has been referred to this court, pertains to the Assessment Years 1980-81 and 1981-82. During the said years, the assessee, who is running his own business, had incurred expenditure towards travelling. The Assessing Officer disallowed portion of the expenditure claimed towards travelling by invoking the provisions of rule 6D(2) of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules'). Being aggrieved by the disallowance, the assessee filed an appeal before the CIT (Appeals). It was submitted on behalf of the assessee that the assessee was the sole proprietor and for the purpose of business, he had to travel and had, therefore, incurred expenditure for travelling. The said expenditure was not personal in nature and therefore it was submitted before the CIT (Appeals) that the Assessing Officer had committed an error while disallowing portion of the expenditure under rule 6D(2) of the Rules. It was further submitted that the Assessing Officer ought not to have invoked the provisions of the said rule because the assessee had incurred the expenditure for his own travelling and the expenditure was not incurred either for any employee of the assessee or for any other person as provided in sec. 37(3) of the Act. After hearing the concerned parties, the CIT (Appeals) deleted the disallowance.

4. The revenue was aggrieved by the order passed by the CIT (Appeals) and therefore an appeal was filed before the Tribunal. After hearing the concerned

parties, the Tribunal upheld the order passed by the CIT(Appeals) whereby the disallowance was deleted.

5. In the circumstances referred to hereinabove, the question, which this court has to decide is, whether, as per the provisions of sec. 37(3) of the Act read with rule 6D of the Rules, the restriction imposed upon the travelling expenditure also applies to the assessee himself when the assessee is a proprietor of his business. In other words, the question is, when the travelling expenditure is not incurred for any of the employees or for any other person, but has been incurred for the assessee, who is a proprietor of his business, whether the restriction imposed under sec. 37(3) read with rule 6D would be applicable.

6. Rule 6D, as it was in force at the relevant time, is as under :

"6(D)(1).....

(2) The allowance in respect of expenditure incurred by an assessee in connection with travelling by an employee or any other person within India outside the headquarter of such employee or other person for the purpose of the business or profession of the assessee shall not exceed the aggregate of the amount computed as hereunder :

(a) In respect of travel by rail, road, waterway or air, the expenditure actually incurred :

(b) in respect of any other expenditure (including hotel expenses or allowances paid) in connection with such travel, an amount calculated at the following rates for the period spent outside such headquarters :

(i)	in respect of any employee whose salary is Rs. 1000/- per month or more	Rs. 80 per day or part thereof
(ii)	in respect of any other employee	Rs. 40 per day or part thereof
(iii)	in respect of any other person	Any amount calculated at the

rates applicab-
le in the case
of the highest
paid employee
of the assessee

..... "

7. Section 37 of the Act, for the relevant

Assessment Years was as under :

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

8. It is not in dispute that the expenditure, which the assessee had incurred for travelling, was in the course of his business and it was not incurred as personal expenses of the assessee.

9. Section 37(3) of the Act also prescribes a limit in respect of travelling expenditure. Relevant portion of the said section at the relevant time was as under :

"(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed."

Thus, the expenditure, which is wholly and exclusively laid out for the purposes of the business and is not in the nature of capital expenditure or personal expenses, subject to the provisions of sec. 37(3) of the Act, is to be allowed while computing the income chargeable udner the head "Profits and gains of busines or profession".

Conditions referred to in sec. 37(3) of the Act are incorporated in Rule 6D of the Rules.

10. Upon reading rule 6D(2), it is clear that when any expenditure in connection with travel has been incurred by an assessee for his employee or any other person, the said expenditure cannot be allowed in toto, but it can be allowed only subject to the provisions of rule 6D(2).

11. In the instant case, it is not in dispute that the travelling expenditure was incurred by the assessee for himself and not for his employee or for any other person and the said expenditure was wholly for the purpose of his business and therefore the expenditure could not have been disallowed under sec. 37(1) of the Act.

12. It has been submitted by learned advocate Shri Naik that though the assessee himself had incurred the travelling expenditure for the purpose of business, portion of the said expenditure would be subject to disallowance under rule 6D(2) for the Rules. It has been submitted by him that behind the enactment of rule 6D(2), the intention of the legislature was to see that an overall control or restriction is put on the travelling expenditure and, therefore, while interpreting the provisions of rule 6D(2), even the expenditure which has been incurred by the assessee for himself is to be limited to the extent specified in the said rule.

13. We have heard learned advocate Shri Naik at length. In our opinion, the view expressed by the revenue before this court does not appear to be correct for the reason that rule 6D(2) clearly indicates that whenever an assessee incurs any expenditure in connection with travelling of his employee or any other person, the amount of travelling expenditure should not exceed the overall limit prescribed under the said rule. Had the intention of the legislature been to put a ceiling on travelling expenditure incurred even by the assessee himself, the legislature would not have used the words "in connection with travelling by the employee or any other person" in rule 6D(2). The use of the said words in the said sub-section clearly denotes the intention of the legislature to put an overall restriction or limit only on an expenditure incurred on travelling of an employee or any other person. We do not agree with the learned advocate when he submits that the intention of the legislature was to put an overall limit on the amount of travelling expenditure.

14. Intention of the legislature must be deduced from the language used. It would not be proper to ignore the meaning of certain words which the legislature has specifically used while drafting rule 6D(2) of the Rules. According to the sound principles of interpretation of statute, we cannot permit the revenue to read certain words which have not been used in the rule and therefore we do not agree with the submission made on behalf of the revenue that the legislature also wanted to apply provisions of Rule 6D(2) to the travelling expenditure incurred by the proprietor of the business.

15. In view of the fact that the expenditure had been incurred by the assessee for his own travelling for his business purpose and as there is no limit prescribed on the expenditure for travelling incurred by the assessee himself, we are of the view that the Tribunal was absolutely justified in coming to the conclusion that the assessee was eligible for deduction of the entire amount.

16. In the circumstances, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)